

4/23/07  
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**ACTON MUNICIPAL PROPERTIES DEPARTMENT**

INTERDEPARTMENTAL COMMUNICATION

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**To:** Don P. Johnson, Town Manager

**From:** Dean A. Charter, Tree Warden (DAC)

**Subject:** Main Street sidewalk tree removals

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**Date:** 4/20/07

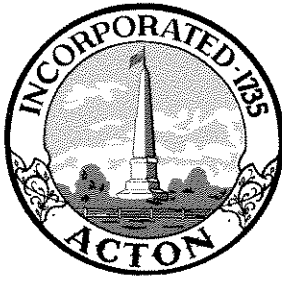
As you know, I held the Public Shade Tree removal hearing for the Main Street sidewalk project yesterday afternoon. Objections have been raised to the removal of the trees, and as required under MGL 87, the decision is remanded to the Board of Selectmen. I have attached copies of the Decision, Legal Notice, and related correspondence. Subsequent to the close of the hearing another individual came in to protest the removals, and she plans to get together a petition to bring to the Selectmen on Monday night. I have also notified the authors of the two protest letters that the matter will be heard on Monday night.

I will be out of state for the next ten days, so I will not be able to attend the meeting. However, I understand that Bruce Stamski will attend to present the plans, and I trust that I have included ample background information on the matter to assist the Selectmen in their deliberations.

Cc: Bruce Stamski

Attachments:

Decision  
Legal Notice  
Bendig Letter  
Swensen Letter  
MGL 87 excerpt.



**TOWN OF ACTON**  
472 Main Street  
Acton, Massachusetts, 01720  
Telephone (978) 264-9629  
Fax (978) 264-9630

**Municipal Properties Department**

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April 20, 2007

**DECISION**

**PUBLIC SHADE TRE REMOVAL HEARING, MAIN STREET SIDEWALK PROJECT**

Notice of a Public Shade Tree removal hearing was posted as required in MGL Chapter 87: notices were posted on the subject trees (copy attached), published twice in the Beacon (4/5 & 4/12), and posted in Town Hall.

This hearing was held at the request of Bruce Stamski, Public Works Director. Scope of work would be the removal of sixty-three (62) Public Shade Trees, plus twenty (20) privately owned trees adjacent to the edge of the Main Street right of way. This work is required to install a sidewalk on the easterly side of the road from Post Office Square to Great Road.

Two written comments were received prior to the hearing, with copies attached to this decision.

Hearing was opened at 2:30 PM on Thursday, April 19, 2007 in Room 126, Acton Town Hall, with Dean A. Charter, Tree Warden, presiding. Also present were: Bruce Stamski, Public Works Director, Frank Widmayer, Chief of Police, and Richard Swensen, resident of #24 Newtown Road, Acton. The two formal letters of protest were read into the record.

Mr. Stamski stated that the sidewalk had been identified on numerous occasions as a high priority project due to the high speed of traffic and lack of road shoulder. It had also been identified as a priority in the Main Street Corridor Study, and that the long range plan would be to continue the sidewalk up to NARA Park. In the short term it would be used by pedestrians and bicycles traveling from Acton Center to various locations on Great Road; a pedestrian light has been installed at the intersection of Great Road and Main Street. The project had received wetlands permits from the Acton Conservation Commission, and was in compliance with an agreement reached with Brewster Conant and the Acton Water District, who control the property adjacent to, and under, the proposed sidewalk. The intent is to make the sidewalk look "rural" with a green strip between the road and the sidewalk, and in many places the sidewalk would be behind the stone wall.

Chief Widmayer spoke forcefully that this section of sidewalk was his number one priority for sidewalks in town due to the high hazards of the area. He also felt that even more trees should be removed to provide a wider road shoulder for vehicle safety. He further noted that this is the first Tree Removal hearing he had ever attended, as a sign of how important he felt this project was.

Mr. Swensen reiterated many of the comments in his letter; he felt that the sidewalk was a waste of money, that no one would use it, that the trees were important natural features, and that the town should be able to provide an approximate cost of maintaining a sidewalk.

Under MGL Chapter 87, if objections are raised to the removal of Public Shade Trees prior to or at the hearing, the decision to remove the trees rests with the Mayor or Board of Selectmen. As two written objections had been received, the matter is referred to the Board of Selectmen. The Board will hear the matter during their scheduled meeting on Monday, April 23, 2007, at 7:30 PM in the Faulkner Room, Acton Town Hall.

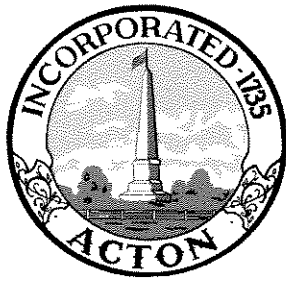
Hearing was closed at 3:10 PM

Respectfully submitted

Dean A. Charter  
Tree Warden

Attachments:

- Legal Notice
- Excerpts from MGL Chap. 87
- Ltr. From R. Swensen
- Ltr. From B. Bendig



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**Municipal Properties Department**  
472 Main Street  
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## **LEGAL NOTICE - Public Shade Tree Removal**

In accordance with MGL Chapter 87, Section 3, notice is hereby given that the Acton Tree Warden will hold a Tree Removal hearing on Thursday, April 19, 2007 at 2:30 PM in room 126, Acton Town Hall, relative to the removal of the sixty-three (63) Public Shade Trees, located on the easterly side of Main Street, between Post Office Square and Great Road. All trees have been marked in the field, and are shown on a plan on file in the Engineering Department.

The trees are to be removed to allow for the installation of a sidewalk along Main Street. In addition to the public trees, twenty (20) privately owned trees will be removed with prior permission. Miscellaneous small brush and limbs overhanging the work zone will also be removed.

Objection to the proposed removal may be made in writing prior to, or verbally at the hearing.

Dean A. Charter  
Tree Warden

*Editorial notes: Please see G.L. Chapter 132, Section 25 (foliage pests); Chapter 41, Section 1(election); Chapter 92, Section 33 (parks commissions); Chapter 41, Sections 21, 23 and 106 (selectman appoint).*

*Municipal tree wardens appointed under Chapters 363, 53 (Sections 12 and 13) and 296 (Sections 2 and 3) are public officers and not "servants" or "agents" within Chapter 171, Section 2, Chapter 375 (which authorizes recovery for negligent death caused by a person or corporation or their "agents" or "servants." Donahue v. Town of Newburyport, 211 Mass. 561 (1912).*

*These two sections (Sections 1 and 2 of this chapter) confer upon the tree warden absolute power respecting the setting out, care, maintenance and removal of shade trees and the enforcement of all provisions of law for their preservation, with the exception of trees under the jurisdiction of park commissioners, but of those also on request of the park commissioners, and with the further exception that no shade trees shall be planted within the public way without license from the Selectman or road commissioners where such authority has been vested in them. These sections define the power and authority of the tree warden respecting shade trees. They leave substantially nothing in this regard for the municipal action of such cities and towns as have no special charter provision touching the subject. Donahue v. City of Newburyport, 211 Mass. 561 (1912).*

### **Chapter 87: Section 3. Cutting of public shade trees; public hearing; damages to fee owner.**

Section 3. Except as provided by section five, public shade trees shall not be cut, trimmed or removed, in whole or in part, by any person other than the tree warden or his deputy, even if he be the owner of the fee in the land on which such tree is situated, except upon a permit in writing from said tree warden, nor shall they be cut down or removed by the tree warden or his deputy or other person without a public hearing and said tree warden or his deputy shall cause a notice of the time and place of such hearing thereof, which shall identify the size, type and location of the shade tree or trees to be cut down or removed, to be posted in two or more public places in the town and upon the tree at least seven days before such hearing and published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than seven days before the day of the hearing or if no such local newspaper exists then in accordance with the provisions of section six of chapter four; provided, however, that when a public hearing must be held under the provisions of this section and under section fifteen C of chapter forty prior to the cutting or removal of a tree, such hearings shall be consolidated into a single public hearing before the tree warden and the planning board, or if there is no planning board, the selectmen of a town or the city council of a city, and notice of such consolidated public hearing shall be given by the tree warden or his deputy as provided herein. Any person injured in his property by the action of the officers in charge of the public shade trees as to the trimming, cutting, removal or retention of any such tree, or as to the amount awarded to him for the same, may recover the damages, if any, which he has sustained, from the town under chapter seventy-nine. (Added in 1867; last amended in 1978)

*Editorial notes: Public shade trees may generally be removed only by the tree warden, and not by him without a public hearing, and not by him without approval by the selectman or mayor if written objection has been made. City of Medford v. Metropolitan District Commission, 303 Mass. 537 (1939).*

*[The tree wardens] power to remove a public shade tree is somewhat limited and prescribed by the provisions of Chapter 87, Section 3, requiring a public hearing before he acts or authorizes action in the matter. Jones v. Inhabitants of the Town of Great Barrington, 273 Mass. 483 (1931).*

*Recovery of damages resulting from public shade tree falling upon dwelling cannot be predicated upon town's negligent failure to keep public way in repair. Jones v. Inhabitants of the Town of Great Barrington, 273 Mass. 483 (1931).*



*Liability of town as owner of or in control of the public streets for failure to remove decayed public shade tree constituting nuisance to adjoining land owner does not rest upon "negligence." Jones v. Inhabitants of the Town of Great Barrington, 273 Mass. 483 (1931).*

*Liability of town for failure to remove decayed public shade tree from public highway rests upon facts showing maintenance of such trees constitutes nuisance to such adjacent landowners. Jones v. Inhabitants of the Town of Great Barrington, 273 Mass. 483 (1931).*

*City officer was not negligent in not removing tree from street, in absence of showing that decay was visible. Cody v. City of North Adams, 265 Mass. 54 (1928).*

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**Chapter 87: Section 4. Cutting down or removal of public shade trees, approval of selectmen or mayor.**

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Section 4. Tree wardens shall not cut down or remove or grant a permit for the cutting down or removal of a public shade tree if, at or before a public hearing as provided in the preceding section, objection in writing is made by one or more persons, unless such cutting or removal or permit to cut or remove is approved by the selectmen or by the mayor. (Added in 1915; no amendments since that time)

*Editorial notes: Please See G.L. Chapter 87, Section 6 (penalty); and Chapter 40, Section 15C (scenic roads).*

*Public shade trees may generally be removed only by the tree warden, and not by him without a public hearing, and not by him without approval by the selectman or mayor if written objection has been made. City of Medford v. Metropolitan District Commission, 303 Mass. 537 (1939).*

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**Chapter 87: Section 5. Cutting down, trimming or removing bushes and small trees**

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Section 5. Tree wardens and their deputies, but no other person, may, without a hearing, trim, cut down or remove trees, less than one and one half inches in diameter one foot from the ground, and bushes, standing in public ways; and, if ordered by the mayor, selectmen, road commissioners or highway surveyor, shall trim or cut down trees and bushes, if the same shall be deemed to obstruct, endanger, hinder or incommode persons traveling thereon or to obstruct buildings being moved pursuant to the provisions of section eighteen of chapter eighty-five. Nothing contained in this chapter shall prevent the trimming, cutting or removal of any tree which endangers persons traveling on a highway, or the removal of any tree, if so ordered by the proper officers for the purpose of widening the highway and nothing herein contained shall interfere with the suppression of pests declared to be public nuisances by section eleven of chapter one hundred and thirty-two, including the Dutch elm disease. (Added in 1915; last amended in 1941)

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*Editorial notes: Please see G.L. Chapter 87, Sections 3 (cutting) and 6 (penalty); and Chapter 40, Section 15C (scenic roads).*

*An officer having charge of trees belonging to a municipality may, and if required by surveyors or road commissioners shall, trim trees, except public shade trees in towns, and bushes standing in ways, etc., does not authorize a tree warden to cut down trees on private lands nor to cut off parts of such trees extending over the street. Commonwealth v. Byard, 200 Mass. 175 (1908).*

*Designated town officials without notice or hearing were bound to order warden to trim or remove trees dangerous to public travel. Jones v. Inhabitants of the Town of Great Barrington, 273 Mass. 483 (1931).*



Brian Bendig  
74 Nagog Hill Road  
Acton, MA 01720

April 19, 2007

By E-Mail

Dean Charter  
Director of Municipal Properties  
Tree Warden  
Town of Acton  
472 Main Street  
Acton, MA 01720

Re: Legal Notice of Public Shade Tree Removal,  
Public Hearing, 4/19/07, 2:30 p.m., Acton Town Hall

Dear Dean:

Please accept these objections to the prospective public shade tree removal in conjunction with the reference public hearing.

I am a resident of the northeastern part of Acton Center close to the proposed sidewalk zone, and as you know chair the Historic District Commission (although I submit this as a private citizen only). I have an abiding interest in preventing the further loss of what remains of Acton's rural appearance and the avoidance of damage to the town's historic resources. I object to the tree removal in conjunction with sidewalk construction for the following reasons.

First, this project would negatively impact the Isaac Davis Trail, in that it would remove trees in close proximity to this National Register site and lead to construction of an asphalt or concrete strip between the street and the trail. The impact on this historic resource should prevent this action. In fact, if public funds would be used for this work, the Massachusetts Historical Commission should be given an opportunity to comment before any tree destruction occurs.

Second, the removal of such a large number of trees along the wooded expanse next to the road in that area would constitute a large-scale cutting of mature growth, including some very substantial deciduous trees. The removal of so many trees will have a marked effect on the shade and bucolic appearance of Main Street in that area. The extensive asphalt or concrete strip all the way from the post office area to the vicinity of Route 2A will have the same effect, as will the unsightly metal sign clutter required for the inevitable crosswalk warnings and marking that would follow.

I wish I could attend the hearing later today, but business commitments prohibit that. Thank you for making these objections part of the record of today's proceedings.

Very truly yours,

/s/

Brian Bendig



RICHARD E. SWENSON 24 NEWTOWN ROAD ACTON, MASSACHUSETTS

Tree Warden  
Town of Acton  
472 Main Street  
Acton, Massachusetts 01720

April 12, 2007

Subject: Public Shade Tree Removal

I am writing this to voice my strong objections to the removal of shade trees on Main St. between the Post Office entry road and Great Road.

We see destruction of our once scenic community with the haphazard and expensive construction of mainly unused sidewalks which, of course, must be maintained and plowed at the taxpayers expense. ( Buy more plows, hire more plow operators, increase your "empire". )

Who would use this side walk ? Would anybody want to walk from Great Rd to the Post office? From the Post Office to the well pumping station?

It is difficult to even imagine sufficient pedestrian traffic demand in this location that could justify such an enormously expensive, burdensome and destructive project. There is nothing so contrary to preserving Acton's character, community, and environment as this undertaking.

The trees and greenery replenish our oxygen and shade us from the scorching sun. Trees are aesthetically pleasing, and can even supply us with a renewable source of energy. They require little maintenance and are hence not a tax burden.

In the meantime Acton has become "un-affordable" for seniors, many of them long time residents, because of the excessive tax burden. (There are two things certain in life: death and taxes. If one doesn't kill you the other one will.)

The proposed construction of sidewalk in this location is pure folly and the removal of trees for that purpose is the model of folly.

To reiterate: I most strongly object to the removal of shade trees on Main St. between the Post Office entry road and Great Road.

  
Richard E. Swenson



**Maryjane Kenney**

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**From:** Bruce Stamski  
**Sent:** Friday, April 20, 2007 3:23 PM  
**To:** Brewster Conant; 'Phoebe Conant'  
**Cc:** Highway Department; Corey York; Manager Department  
**Subject:** Sidewalk progress

Brewster/ Phoebe,

Just a quick update. Dean Charter, as tree warden, held his hearing for tree removal on the 19th. Two letters were received objecting to the tree removal. One from Dick Swenson from Newtown Road and another from Brian Bendig as a private citizen not as the Chair of the Historic District Commission. His concern in part was the impact on the Issac Davis Trail. Since these objections were filed the matter gets referred to the selectmen. The Selectmen will be hearing the matter this Monday the 23rd at 7:10 pm. Assuming the Selectmen approve the removal, the tree work will begin Tuesday May 1. We will talk to you prior to that date to determine exactly where you want the hardwood dropped off.

On another note, the sidewalk surface is bituminous concrete (black) not Portland cement concrete (grey) as we have on the plans.

As you probably know the Conservation Commission has approved the plans and issued a rather standard order of conditions. They also approved the work on the Issac Davis Trail. Unfortunately we were not able to do it before Patriots Day due to the weather. We will get to it over the summer.

Once the tree work is completed the highway crews will be installing siltation control fence and do the work to extend drainage lines where required. we look to have the major sidewalk construction bid package ready by mid May and have construction done by the end of the summer.

Please give me a call if you have any questions.

Sincerely,  
Bruce Stamski

4/20/2007